

**Equal Employment Opportunity**  
**Technician Equal Opportunity Program**

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**Summary of Changes.** This handbook provides guidance on the Equal Employment Opportunity Program of the California National Guard.

**Applicability.** California National Guard Full-time Personnel Regulation (CNGFPH) applies to all California Army and California Air National Guard technicians and to commanders, managers and supervisors (military or civilian) with authority or responsibility over full-time personnel management.

**Proponent and Exception Authority.** The proponent of this handbook is the Joint Force Headquarters, J-1, Directorate for Human Resources. The proponent has authority to approve exceptions to this regulation when they are consistent with controlling laws and regulation.

**Supplementation.** Supplementation of this regulation is prohibited.

**Suggested Improvements.** Users of this regulation are invited to send comments and suggested improvements to Joint Force Headquarters, Directorate for Human Resources, 9800 Goethe Road, Sacramento, CA 95826-9101.

**Distribution.** Distribution of this regulation is Army - A and Air Force - F.

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**1. Introduction.**

a. This handbook has been prepared for use as your Equal Employment Opportunity (EEO) reference guide for managers and supervisors of technician employees. It is not intended to serve as a consolidation of all EEO laws and regulations. Critical situations and questions should always be directed to the State Equal Employment Manager (SEEM).

b. You are asked to familiarize yourself with this handbook. Although you may already know the basic principles of EEO, as a manager or supervisor, it is incumbent upon you to maintain and periodically update your knowledge of EEO.

c. Several topics will be addressed in this handbook:

- (1) Basic principles of EEO and Technician Affirmative Employment.
- (2) Sexual Harassment.
- (3) Responsibilities of management, employees, the EEO staff, and persons with collateral duties such as Special Emphasis Program Managers (SEPMs) and EEO Counselors.
- (4) The Technician EEO complaint process.
- (5) Special Emphasis Programs.
- (6) Sources of information and types of assistance.

## **2. The Adjutant General's Harassment Policy.**

With the publication of my Multi-year Affirmative Employment Plan (AEP) for Federal Technicians, the California National Guard continues to be fully committed to ensuring that every applicant and technician enjoys the right of equal treatment in their work place. Decisions based on non-merit factors such as race, color, religion, national origin, gender and physical/mental handicap are illegal.

This policy is founded in Presidential Executive Orders, Title VII of the Civil Rights Act of 1964, as amended, Age Discrimination in Employment Act of 1967, Equal Pay Act of 1963, as amended, and the Vocational Rehabilitation Act of 1973, as amended.

The purpose of an AEP is to reverse effects of past discrimination by using reasonable goals and objectives. Supervisors will be held accountable for specific action items from the AEP. Management support is vital, from all levels, to assure program success. It is imperative that all supervisors and managers become familiar with the AEP.

Discrimination negatively impacts on our entire agency. Supervisors will be held accountable to administer hiring, placement, and training free of prejudice and stereotypes. Personnel actions affecting technicians (selections, transfers, promotions, reductions, discipline, separations, RIFs, etc.) will be monitored to identify trends that may reflect non-compliance with my AEP and federal law. Identification of any adverse trends will allow us to identify and eliminate personnel policies and procedures that are defined as unlawful discrimination.

Those in non-supervisory positions must realize that their behavior is also expected to reflect my policies. Each individual will be held accountable for maintaining appropriate work relationships with peers, subordinates, and supervisors.

A positive working atmosphere free from unlawful discrimination and harassment maintains self-esteem and preserves human dignity. Personal accountability is a vital element. Timely and appropriate actions will be taken when it is determined that an employee (supervisory or non-supervisory) is violating discrimination laws and policy.

I affirm the right of every individual to perform his or her work free from sexual or other harassment. Along with being illegal, sexual/gender, racial, religious, nationality, age, and disability harassment and discrimination are forms of misconduct. Harassment creates a threatening or hostile environment that adversely affects mission accomplishment.

Sexual harassment is defined as repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature, which is unwelcome to the recipient. Sexual harassment can occur between members of the same gender, as well as between members of both genders.

Sexual and other harassment will not be tolerated! Verified allegations of harassing behavior may result in adverse personnel actions. This applies to harassment and/or discrimination between those of the same rank, as well as between supervisors and subordinates.

Commanders, managers, and supervisors are expected to provide a workplace free of discrimination and harassment. They must actively support my policies and discourage development of a problem by setting appropriate examples and by taking timely and appropriate steps when an incident occurs. Co-workers are also expected to discourage unprofessional behaviors among themselves.

Ideally, a Technician experiencing unwelcome, offensive, and/or harassing behavior should let the offending person know that the behavior is unwelcome and ask him or her to stop. Some employees are not comfortable confronting others in this manner, and are encouraged to inform their supervisor, or someone within their Technician chain of supervision, of the offensive conduct.

### 3. The Equal Employment Opportunity Mission.

a. Equal Employment Opportunity (EEO) supports the mission of the California National Guard by ensuring that the civil rights of all technician employees and prospective employees are maintained. This includes the opportunity to work free of harassment, to progress upward on the basis of merit, ability, and potential, and to receive personnel actions free from discrimination on the basis of race, color, gender, national origin, age, handicap, and religion. The mission of the California National Guard Equal Employment Opportunity office includes:

(1) Recommending effective external and internal recruitment strategies and practices for identifying qualified technician candidates and ensuring retention and advancement based on quality of work and experience.

(2) Identifying and eliminating any practices, regulations, and procedures which may perpetuate past discrimination in the technician program on the basis of race, color, gender, national origin, age, disability, religion and retaliation.

(3) Developing, promoting, and maintaining effective EEO programs.

(4) Monitoring all technician Affirmative Employment Plans to provide the Adjutant General with periodic analysis of goal accomplishment.

(5) Conducting necessary inquiries into alleged discrimination and implementing remedial relief in a timely manner.

(6) Supporting the Adjutant General's vision that "people are our most precious resource" by encouraging all employees to accept the responsibility of treating each other fairly and equally.

### 4. What is EEO?

a. Equal employment opportunity (EEO) is defined as the "right of all persons to work and advance on the basis of merit, ability, and potential".

b. Federal fair employment laws prohibit discrimination and require the Government to provide equal employment opportunities without regard to race, gender color, religion, sex, national origin, age, or disability condition. Accordingly, the California National Guard's policies provide for fair and equal treatment of technician employees and applicants for employment in all personnel and management decisions.

c. Technicians who believe they have been discriminated against because of any factor protected under the fair employment laws may file a complaint of discrimination.

d. Each California National Guard supervisor is responsible for ensuring all employees are treated fairly, equally, and fostering a spirit of cooperation and good human relations in a working atmosphere free from prejudice, ill feelings, or resentment. It is unreasonable to believe that all employees will be close friends, or that everyone's personality will agree with everyone else - all of the time. However, it is reasonable, and expected, that all employees will treat each other with dignity and respect - at all times!

e. Managers and supervisors who make decisions about technician hiring, training, performance evaluations, promotions, and work assignments must implement EEO as an intrinsic part of personnel management.

### 5. Guidelines.

The California National Guard is committed to providing equal employment opportunity throughout the agency and expects all employees to support these policies. All managers and supervisors are evaluated on their EEO compliance and achievements, as part of their overall performance. At a minimum, they are expected to support EEO through the following actions:

a. Providing adequate time and budget for the activities of Special Emphasis Programs.

(1) Reviewing available data to assess progress in areas under their supervision.

(2) Requesting briefings on selected topics for themselves and their subordinates from the State-Equal Employment Manager (SEEM).

b. Assisting technicians in developing their full potential and utilizing their skills to the maximum extent.

(1) Counseling on strengths and weaknesses

(2) Identifying and pursuing self-development activities that enhance performance and promotion potential.

(3) Providing effective direction, feedback, development, and counseling to all subordinates.

(4) Assigning work commensurate with the employee's position, skills, and developmental needs.

(5) Evaluating each subordinate's performance accurately.

(6) Making appropriate recommendations.

c. Demonstrating thoughtful treatment of all employees.

(1) Planning and providing equal opportunity in training, recognition, performance appraisals, working conditions, assignments, promotions, and other personnel considerations.

(2) Expecting subordinates to treat all employees and co-workers fairly.

- d. Remaining current with EEO responsibilities.
  - (1) Requesting and attending EEO training.
  - (2) Working closely with the EEO staff on interpreting and implementing EEO requirements.
  - (3) Familiarizing themselves with the Adjutant General's Affirmative Employment Plan (AEP) program for technician employees.
  - (4) Support EEO Counselors in performing their duty.
- e. Participating in EEO activities and encouraging subordinates to do the same.
  - (1) Volunteering for Special Emphasis Program committees.
  - (2) Attending and participating in special emphasis and ethnic observances programs.
  - (3) Ensuring that all employees are given an opportunity to attend and/or participate in special emphasis observance programs.
- f. Establish effective channels and lines of communication with all employees.
  - (1) Keeping employees informed of changes in priorities or policies relating to EEO.
  - (2) Giving frequent feedback for both positive and negative performance.
  - (3) Relying solely on job-related factors in managing subordinates.
  - (4) Maintaining a harmonious work environment, free of discrimination.
  - (5) Acting promptly on any complaints of discrimination.
  - (6) Being open to questions about the fairness of assignments, training, and promotions.
  - (7) Emphasizing their commitment to EEO to employees by words and actions.

## **6. EEO Organizational Structure.**

- a. The EEO office for Federal employees of the California National Guard is located in the Human Resources Directorate of The Adjutant General's Office. The official address is: California National Guard, Joint Force Headquarters, ATTN: HRO-EEO, P. O. Box 269101, Sacramento CA 95826
- b. The State Equal Employment Manager (SEEM) manages the Adjutant General's EEO program. He or she evaluates and ensures internal EEO and affirmative employment compliance with Federal and State laws and statutes. The SEEM examines and analyzes EEO conditions in the technician workplace and provides expert advice, guidance, and direction to executives, managers, and employees on EEO and affirmative employment issues.
  - (1) Advises management on all aspects of EEO and recommends changes in technician policy, regulations, procedures, etc.
  - (2) Provides leadership and guidance for the development and execution of the Multi-year Affirmative Employment Plan for technician employees.
  - (3) Monitors and evaluates EEO and affirmative employment activity by monitoring and evaluating management procedures.
  - (4) Administers the technician EEO complaints procedure.
  - (5). Assigns and trains EEO counselors.
  - (6) Manages Special Emphasis Programs and assigns and trains Special Emphasis Program managers (SEPMs).
  - (7) Designs and conducts EEO training for supervisors, managers, and employees.
  - (8) Maintains statistics on employee demographics and provides analysis and reporting for a variety of Federal and local reporting requirements.
  - (9) Maintains liaison with Army and Air National Guard recruiting officials.
  - (10) Maintains liaison with community and ethnic organizations.

## **7. EEO Collateral Duty Staff.**

- a. Other employees who have official EEO responsibilities as additional duty to their assigned position are considered collateral duty EEO staff. Their collateral duties are in writing and attached to their normal position description. Evaluation of their collateral duty performance is provided to their supervisors by the SEEM.
- b. The collateral duty EEO staff, throughout the state, changes periodically. A list is provided for all facility bulletin boards, and updated as changes occur. If any employee is unclear about whom to contact for their specific issue or complaint, they may contact the SEEM.
- c. EEO Counselors are neutral employees who have received special training in the Federal discrimination complaint process.
  - (1) Technicians who believe that he or she has been discriminated against, and wishes to make a discrimination complaint, will be provided an EEO Counselor which is required by Federal law.

(2) The Counselor will meet with the technician to obtain the base(s), issue(s), and allegations of the complaint.

(3) The purpose of EEO Counseling is to provide the complainant of their rights and responsibilities, and if possible to obtain a resolution of the employee's complaint by meeting with the appropriate individuals (supervisors, co-workers, etc.) and the complainant.

(4) It is important to reiterate that the Counselor is neutral. He or she is not considered an advocate for management or for the complainant.

(5) EEO Counselors report to the SEEM.

## 8. What is Discrimination?

a. Discrimination is defined as the use of any selection procedure that has an adverse impact on hiring, promotion, discipline, or other employment decisions based on any race, gender, color, religion, national origin, age, handicap, or reprisal for participating in an EEO process. Such practices are unlawful.

b. Federal EEO laws prohibit an employer (or agent of the employer) from discriminating against persons in all aspects of employment - including recruitment, selection, evaluation, promotion, training, compensation, discipline, retention, and working conditions.

c. California National Guard technicians, managers, and applicants for employment are covered by these EEO laws. For example, the protection against racial discrimination is not limited to members of any particular race. All employees are afforded equal protection under Title VII of the Civil Rights Act of 1964, as amended.

d. Treating a person unfavorably in comparison to others may violate EEO laws only when that person's protected status is a factor in the treatment. For example, a white female is given better assignments than another white female is not discriminatory if the decision is based on job-related factors. On the other hand, a white female is given a better assignment rather than a similarly qualified minority male may be discriminatory (either racial or gender or both) if the assignment decision was based on either the individual's race or gender.

e. Employment decisions should be based only on job-related merit factors. All employees should avoid conduct, which undermines fair and equal treatment. Although all unfair treatment is not necessarily discrimination, it is poor personnel management and against the Adjutant General's policies.

f. Federal EEO laws do not require an employer to extend preferential treatment to any person or group because of race, color, religion, gender, national origin, age, or handicapping condition. EEO merely demands that all persons receive the same opportunities for hiring, training, promotion, etc. When these opportunities have not been available to all groups in the past because of discrimination, affirmative employment is required to overcome the effects of such bias.

g. The following strategy and general approach should be considered by managers and supervisors in avoiding discrimination:

(1) Know and comply with applicable Federal and State EEO laws and regulations, this handbook, NGB EEO policies, and the Adjutant General's Affirmative Employment Plan applies to all technician employees.

(2) Explain NGB EEO policy clearly to subordinates and advise that discrimination against anyone, under any circumstances, will not be tolerated. Advise technicians to report any EEO-related problems immediately to their supervisor, EEO Counselor, and/or the SEEM.

(3) Treat all employees fairly and equally, at all times

(4) Take immediate (and appropriate) corrective action when informed of actual or potential discriminatory employee conduct. Consult with the SEEM, for advice, if necessary.

(5) Appraise employees on a continuing basis when their work is poor or marginal, and explain the nature of the problems and improvements that are needed. Explain the possible consequences if performance does not improve. Do not postpone these actions until the annual appraisal is due. It should never be a surprise, at annual appraisal time, for an employee to find out that their job performance needs improvement.

(6) Document discussions and actions concerning topics, which often lead to technician EEO complaints (employee performance, career advancement, and disciplinary problems).

(7) When in doubt about a matter, seek the advice and guidance of the Human Resources Office before making a decision.

h. Supervisors and managers often express concern about avoiding EEO problems in three areas: interviewing/hiring, promotions, and performance appraisals.

(1) Interviewing/hiring - Questions should pertain to qualifications only. All individuals should be asked the same questions. Managers and supervisors should not consciously or subconsciously allow their own stereotypical perceptions to influence their judgment. It is extremely important that supervisors and managers maintain interview documents for at least two years. These documents would include a copy of the questions asked of each interviewee, the evaluation criteria and standards, interview notes, etc.

(2) Promotions - Be able to justify promotions based on quality of work, knowledge, standards, etc.

(3) Performance appraisals - Document all performance - good and bad. Counsel employees periodically about their performance. Provide/make available mission-essential training. Make selections for training attendance fairly.

i. Managers and supervisors can minimize potential EEO problems by applying the same standards to all employees, particularly in administering discipline and dealing with termination for poor performance or policy violations. By applying the following guidelines and documenting actions, managers will minimize the likelihood of adverse actions becoming successful EEO cases.

j. With regard to poor performance, ask yourself:

(1) Is the same performance required of other employees with the same duties? Are there other employees with similar performance who have been treated differently? What will the documentation reveal?

(2) Have I made it clear what I expect of this employee? Is the expected performance job-related and reasonably achievable?

(3) Has the employee been given adequate training? Has the employee been given adequate time and opportunity to improve? Has this been documented?

(4) Is there adequate and objective documentation of poor performance?

(5) Have I considered less serious actions than the one I am now planning to take, or tried them without success?

(6) Is this action consistent with those in similar situations.

k. With regard to policy violations, ask yourself

(1) Does the employee's action violate written policy? Has this policy been communicated clearly to all employees?

(2) Is the action to be taken against the employee consistent with the action taken against all other employees who have committed similar policy violations?

(3) If the manager or supervisor can answer yes to these questions, the likelihood that discrimination has occurred is minimal.

## **9. Preventing Sexual Harassment.**

a. Refusal to correct adverse working conditions under his/her supervision. If members of the employee's peer group make racial/ethnic slurs or denigrate an individual's religious or sexual group, the manager is responsible for rectifying the situation immediately. Furthermore, the manager should also be concerned about perceptions of visitors if such statements are heard and go unchecked. The interests of the California National Guard are best served when each employee is free to discharge his/her duties without the disruption of illegal harassment.

b. Sexual/gender, racial, religious, nationality, age, and disability harassment are infringements on the right of all employees to an environment free of harassing behaviors or pressure. Sexual and other harassment reduces productivity by lowering employee morale and motivation resulting in a employee transfers, resignations, or dismissals stemming from the tense work environment it creates.

c. Sexual/gender, racial, religious, nationality, age, and disability harassment are forms illegal discrimination. Sexual harassment, in particular, involves unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature, when:

(1) Submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career.

(2) Such conduct interferes with an individual's performance by creating an intimidating, hostile, or offensive environment.

d. Any person in a supervisory, managerial, or command position that uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes unwelcome verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment. The California National Guard recognizes that sexual and other forms of harassment are violations of the law and maintains a "no tolerance" policy. Allegations of such conduct will be investigated and individuals found to be participating in such illegal behavior will be dealt with swiftly and appropriately.

e. Anyone can be a victim of harassment. Sexual and other forms of illegal harassment may occur between men and women, persons of the same gender, or persons of the same race, nationality or religious group. There are two specific types of sexual harassment:

(1) Quid Pro Quo occurs when an employee is subject to unwelcome sexual advances and submission to such are made the basis for hiring, firing, and other personnel actions.

(2) Hostile environment exists when any type of unwelcome sexual behavior creates a hostile or offensive work environment. In other words, an employee's job performance, morale, and/or physical or mental well being are affected.

f. Examples of sexual harassment may include:

- (1) Sexual or intrusive questions about an employee's personal life.
- (2) Explicit descriptions of the harasser's own sexual experiences.
- (3) Abuse of familiarities or diminutives such as "honey", "baby", "dear", etc.
- (4) Unnecessary, unwanted physical contact such as touching, hugging, pinching, patting, kissing.
- (5) Whistling, catcalls, leering, exposing genitalia, physical or sexual assault, to the worst case

scenario of rape and stalking.

g. The California National Guard is liable for the illegal acts of its managers and supervisors when they know, or should have known, of the illegal harassing conduct, and fail to take immediate and appropriate action. The California National Guard is also liable for illegal harassment that is perpetrated by employees.

h. All employees must assume responsibility for the workplace:

- (1) Know and understand the California National Guard's policy on sexual and other harassment.
- (2) Be aware of how your actions affect others.
- (3) Observe the work environment and report any evidence of harassment to your immediate su-

pervisor and/or the SEEM

i. Managers and supervisors have the same responsibilities as other employees, as well as additional responsibility for:

- (1) Modeling appropriate behavior.
- (2) Setting local policy and being consistent in enforcement of the policy.
- (3) Educating employees on what constitutes sexual and other harassment, how it should be handled, and what actions may be taken against those who harass. Training is available from the SEEM's office.
- (4) Fact-finding and resolving incidents of alleged sexual or other harassment. This may entail

counseling all affected parties and conducting follow-up checks to determine whether the resolution was successful. Supervisors must document the situation, the remedial actions taken, and the improvements noted. If uncertain about how to proceed, contact the SEEM.

j. Managers and supervisors must remember that awareness is critical for the prevention of sexual or other harassment. Managers and supervisors at all levels share the responsibility to maintain a climate that discourages harassment. Eliminating harassment from the work place increases the quality of job performance and mission accomplishment.

k. Victims of harassment are encouraged, but not required, to confront the harasser directly, and describe to him or her the behavior that they find offensive, or makes them uncomfortable, and how it affects their work. A victim should ask the person to stop the behavior. Most offenders, when informed that their conduct is unwelcome, will cease. Most offenders do not intend to offend or harass anyone.

l. Often, the harasser is unaware that their behavior is offensive. However, if the behavior continues, the employee may write a letter to the harasser, again describing the situation, and again requesting that the behavior cease their harassment and should seek assistance.

m. If the harassment continues, the employee should inform his or her supervisor. The employee may also inform the SEEM (or inform the SEEM in lieu of the supervisor). Documentation is important. For instance, dates the employee spoke with the harasser and the general wording of the conversation in which the harasser was asked to cease their behavior. A copy of any letter sent or given to the harasser should be maintained. Dates, places, times, and witnesses should be documented. If any employee is uncomfortable confronting the harasser, directly, initial contact should be made with the supervisor or the SEEM.

## **10. Commitment to EEO.**

a. This section contains information, guidance, and practical "do's and don'ts" in various management areas. It is designed to assist you in integrating technician EEO principles and mandates into your everyday management style. It also contains some suggestions for positive action, which will enhance the California National Guard's EEO efforts and, at the same time, show that you, as a manager, have exceeded standard requirements.

b. An effective technician EEO program requires that managers be alert to potential areas of discrimination and be sensitive to the attitudes and expectations of their employees. This awareness and sensitivity will help managers avoid the creation of problems and ensure that recruitment, development, and advancement of all employees is fair and impartial.

c. Before we can solve a problem, we must recognize that we might have one. It's easy to sit back and boast that we have no EEO problems, and that discrimination, in our agency, does not exist. We all know that we're fair and impartial! However, unless we actually take a critical and realistic look at our organization, we may never recognize that our policies, procedures, and actions may, at times, be less than fair and impartial. Our first step is to analyze our work force:

- (1) How many men? How many women?
- (2) How many minorities?
- (3) How many men, women and minorities in each occupational series?
- (4) How do the grade levels of minorities and women compare to majority males?
- (5) When was each employee last promoted?
- (6) Which employees are in dead-end positions?
- (7) Which employees have been selected to attend training in the past 12 months?

d. Our analysis may reflect some technician EEO inconsistencies. For example, all men in higher grade levels and women in lower grade levels in the same occupational series may indicate some recruiting deficiencies or job selection biases.

e. There may be some discriminatory practices (intentional or not) in terms of training, development, or promotions. Managers should attempt to identify causes of imbalances. Attempts to correct inconsistencies and imbalances may include the identification of training needs, career counseling, preparation of individual developmental plan, or other steps to "level the playing field" and assure that all employees can compete for promotions or positions with better upward mobility.

f. Effective technician EEO requires not only that managers be alert to potential problems, but that they also be sensitive to the needs of employees and to the impact their actions have on employees. It is sometimes difficult for us to make a judgment on how others wish to be treated. We know how we want others to treat us, but we cannot presume to know how each other individual wishes to be treated. What, to us, is acceptable, may be unacceptable to others. What, to us, is a humorous joke, may be a grievous insult to someone else.

g. Some employees may not be comfortable communicating with their supervisors. We must recognize that, some employees are intimidated by the mere position of supervisor or manager. There are standards of formality required in any business organization, and our business is further complicated with military rank structure. We must all be alert to avoid types of addresses and conversation that are not applied uniformly to all employees or may be interpreted as demeaning by some employees. For instance, if we address our male employees as Mr. or by their military rank, we must also ensure that we address our female employees in a similar manner (Ms/Mrs/Miss or military rank). While using first names is not prohibited in our civilian capacity, if we, as managers and supervisors, expect our employees to address us as Mr/Ms/Mrs. or by our military rank, we must also afford them the same courtesy.

h. Similar consideration probably applies to almost every employee. Ethnic joking is rarely amusing to the individual belonging to that particular ethnic group. Jokes about a particular religion are usually funny only to those of different religions. The term "boy" is most likely considered demeaning by most men. Remarks about women's liberation are not particularly humorous to the female employee who wants nothing more than a fair chance at the next promotion.

i. We as managers and supervisors may unconsciously create an undesirable environment by our actions, as well as when speaking. If a manager joins only male employees at coffee breaks and lunch periods, and excludes women employees doing the same job, the female employees may infer that they are considered second-class employees. Moreover, such exclusion may prevent female employees from being part of the informal peer organization, and thereby removes them from an important source of information.

j. Giving white employees highly visible assignments, while giving minority employees less visible ones, does not reflect an environment of fairness and impartiality. Excluding certain groups from social activities, such as picnics and holiday parties, is discriminatory. If employees have religious dietary needs and office parties or retirement affairs are given only in places, which cannot fulfill their needs, they perceive that they are being discriminated against.

k. Managers should be sensitive to the career aspirations of their secretarial and clerical employees. They may be interested in moving into a professional or technical series and may need the manager's advice and counseling to do so.

l. Managers that are effective in EEO, critically look at their organization, and at themselves, to ensure they are being fair and impartial. They also recognize that while the intention of their actions is important, the manner in which their actions are perceived is crucial.



## 11. What is Affirmative Employment?

a. We've been using the term "affirmative employment" and "affirmative employment plan" throughout this handbook. Now, let's explore its definition and intent.

b. Affirmative employment is a legal concept that requires the California National Guard to do more than ensure that equal employment opportunity is a part of our practices. It requires the California National Guard to make additional efforts to recruit, employ, and promote technicians who are qualified members of groups, formerly excluded from the employment process. For affirmative employment purposes, protected groups include Alaskan Natives, American Indians (Native Americans); Asian/Pacific Islanders; Blacks (African Americans); Hispanics; and White Females.

c. The primary purpose of the technician affirmative employment program is to identify and remove organizational barriers that impede the hiring, promotion, training, and retention of qualified minorities and women. The main component to this program is the Technician Affirmative Employment Plan (AEP).

d. The AEP is a tool which, when used correctly, will help to achieve fairness and equity in employment by:

- (1) Identifying and eliminating discriminatory personnel policies and practices.
- (2) Striving to increase the number of minorities and women, at all levels, where they have historically been excluded.
- (3) Devising internal monitoring and reporting procedures that measure progress in eliminating discrimination.

e. The "multi-year" technician AEP consists of:

- (1) Policy statements from the Adjutant General to affirm that the requirements will be enforced.
- (2) Delegation of authority, organizational chart and certification of qualifications for principal responsible officials.

(3) Plan for the prevention of sexual harassment.  
(4) Statement of monitoring and evaluation system.  
(5) Program analysis of the current status of affirmative employment. There are 8 program elements:

- (a) Organization and resources.
- (b) Work force analysis.
- (c) Discrimination complaints.
- (d) Recruitment and hiring.
- (e) Employee development program.
- (f) Promotions.
- (g) Separations.
- (h) Program evaluation.

f. Assessment of manifest imbalances and conspicuous absences.

g. Problem and barrier identification.

h. Personnel and management policies, systems, and procedures which operate as barriers/problems to employment for each protected group are evaluated. Barriers/problems are examined in the context of the entire recruiting and staffing process.

i. Goal/objective statements and action items.

j. Report of objectives and action items.

k. The "multi-year" Affirmative Employment Plan does not include:

(1) Quotas – a definite or fixed number. The major characteristic of quotas that distinguishes them from goals/objectives is the requirement for mandatory attainment. The AEP does not include quotas.

(2) Punishment for failure to attain goals and milestones. The annual report of accomplishments includes an analysis of the AEPs goals and action items. Goals are reviewed and revised, if needed, and new goals are identified, if appropriate. Since quotas are not used, there are no mandatory accomplishment statements in the AEP.

l. Managers and supervisors can practice technician affirmative employment by:

(1) Encouraging a work environment of mutual respect and cooperation among employees.  
(2) Avoiding racial, ethnic, age, gender, etc., stereotyping in evaluating employee abilities and performance.

(3) Assisting subordinates in evaluating their skills and recommending areas for improvement to qualify for promotion opportunities. Technician employees who have the desire and potential for future advancement should be mentored to prepare them for higher level positions.

(4) Using career development or trainee positions to reach minorities and women who have potential for a higher level position.

- (5) Encouraging qualified minorities and women to seek training and apply for vacancies and transfer opportunities in areas where they are under-represented.
- (6) Knowing the technician affirmative employment goals for their area and the composition of their technician work force.
- (7) Reviewing technician job descriptions and qualifications to insure they are job-related.
- (8) Knowing the barriers identified in the EAP and working to eliminate them through special actions whenever possible.
- (9) Questioning why qualified members of under-represented groups are not applying for job vacancies.
- (10) Demonstrating to subordinates a commitment to technician EEO and affirmative employment through leadership and positive actions. Ensuring that staff members with hiring, training, or promotion responsibilities are familiar with and comply with, EEO and affirmative employment policies.
- (11) Publicizing EEO policies and affirmative employment efforts and successes in agency or department memos, newsletters, and general employee publications.

## **12. What are SEPs?**

a. Special Emphasis Programs (SEPs) are designed to assist in the recruitment, selection, development, and career advancement of Alaskan Native, American Indians, Asian/Pacific Islanders, Blacks, Hispanics, and Women in the Federal employment of the National Guard. These programs are managed by collateral duty employees, who are called Special Emphasis Program Managers (SEPMs). The SEPM serves as the resource person or advisor on the unique concerns of the particular constituent group.

b. It is the responsibility of every manager to take affirmative steps toward achieving the objectives of special emphasis programs by:

- (1) Monitoring, planning, and implementing each program's direction and areas of emphasis.
- (2) Encouraging recruitment and effective relationships with organizations serving these groups.
- (3) Actively promoting programs by supporting their employees' participation in activities.

c. SEPMs are collateral duty managers that advise management and other agency officials in the implementation of the programs. Contact the SEEM for more information.

## **13. The Discrimination Complaint Process:**

a. A technician complaint of discrimination is an allegation that a technician has been denied employment, promotion, or training, or has been adversely affected in any other condition or term of employment because of his/her status as a member of a particular group.

b. The various Federal laws prohibiting discrimination in the terms and conditions of employment apply to all technician employees and applicants for employment. These laws prohibit discrimination on the basis of race, color, religion, national origin, gender (including sexual harassment), age (40+), and physical or mental handicap. The law also protects those who participate in EEO from reprisal and retaliation.

c. Issues which give rise to most technician discrimination complaints are:

- (1) Non-Selection
- (2) Evaluation/appraisal
- (3) Reasonable accommodation
- (4) Reprisal/retaliation
- (5) Working conditions
- (6) Sexual harassment
- (7) Promotion
- (8) Termination
- (9) Training
- (10) Leave/attendance

d. As previously mentioned, EEO is the right of all persons to work and advance on the basis of merit, ability, and potential. There may be occasions, however, when technician employees/applicants may harbor feelings of anxiety, frustration, anger, resentment, fear, and/or mistrust. This may be a result of many occurrences culminating in an incident which motivates the individual to seek a remedy for the situation.

e. Before a Federal technician can file an EEO complaint, they must meet with an EEO Counselor. The purpose of counseling is to attempt a resolution of problems by means of informal inquiry and mediation. Counseling is not to be construed as an in-depth investigation. It is an attempt to settle problems through a variety of means; interviews, suggestions, examination of personnel records, informal mediation, and review of facts and issues.

f. EEO counselors serve as a bridge between technicians/applicants and management, and attempt to resolve allegations of discrimination from technicians/applicants on an informal basis. They provide an open and systematic channel through which technicians and applicants may raise questions, get answers, discuss allegations of discrimination, and informally resolve problems. Through a variety of means (interviews, examination of personnel records, review of facts, informal mediation), the counselor attempts to identify the allegations of discrimination and works with the technician/applicant and the management to reach a resolution of matters (that may otherwise give rise to formal complaints of discrimination).

g. Counselors are not an advocate for either management or the technicians/applicant. The Counselor serves as an independent and objective fact-finder. If the concern is not EEO related, the counselor must refer the technician to the appropriate means of redress (i.e. classification specialist, union officials, agency grievance procedures, IG, etc.). If the concern is EEO related, the counselor attempts to resolve the concern in an objective, fair, and prompt manner. The counselor does not make a determination on the merits of the matter, but is responsible for:

- (1) Advising the complainant in writing of their rights and responsibilities
- (2) Conducting an inquiry, not a formal investigation, into the alleged discrimination.
- (3) Interviewing relevant parties (including supervisors and co-workers).
- (4) Reviewing evidence and obtaining facts.
- (5) Meeting with the supervisor and complainant to attempt informal resolution of allegations or discrimination.

h. Technicians/applicants must approach an EEO counselor, supervisor or the SEEM **within 45 days**, of the occurrences of alleged discrimination - or within 45 days of their knowledge of such incidents. A counselor is then appointed and has 30 days to conduct an informal inquiry, if more time is needed the counselor must request a 30 day extension with approval from the complainant. If ADR has been agreed to by the complainant and management an additional 30 days will be provided. If no resolution is achieved the complainant is issued a "Notice of Right to File a Discrimination Complaint".

i. When it becomes apparent that the allegations of discrimination cannot be resolved informally, the counselor issues the "Notice of Final Interview" to the complainant. It is during this final interview that the complainant is issued the "Notice of Right to File" letter described above. The complainant then has **15 calendar days** from receipt of the "Notice of Right to File" to actually file a complaint with the SEEM.

j. The employee/applicant has the following rights during the informal stage of complaint processing:

(1) Right to representation (or counsel). Note: The representative is not interviewed; he/she is there only to advise the complainant.

(2) Confidentiality in the process, and anonymity during the informal stage, if desired. If employee is covered by a negotiated grievance procedure that permits allegations of discrimination, he/she has the option of electing the negotiated grievance procedure or the statutory discrimination complaint process, but not both. By filing a formal complaint or a written grievance, he/she has elected the forum in which they choose to pursue their issues.

(3) Alternative Dispute Resolution (ADR) is an attempt to resolve the matter at the lowest level.

(4) Issuance of a "Notice of Final Interview" that terminates the informal process - if informal resolution has not been achieved. A formal complaint, if employee chooses to file one, must be filed within 15 calendar days from the date of their receipt of "Notice of Final Interview".

k. During all stages of the complaint process, the complainant may be represented by a person of his/her choosing, including another employee (excluding EEO officials). A representative may not be selected where a conflict of interest would result.

l. All California National Guard employees who have knowledge of the circumstance(s) or incident(s) causing an employee to seek EEO counseling or to file a complaint must cooperate during all stages of the process. This includes assisting EEO counselors and investigators in their efforts to conduct timely and complete inquiries and investigations and providing testimony and documentary evidence.

m. Complainants who fail to cooperate may have their complaints canceled. Other parties, including responsible management officials and witnesses, who do not cooperate, may be disciplined for failing to assist in official Government matters.

n. During a formal investigation, sworn testimony, in the form of an affidavit, is taken from all parties. Testimony and information given are not confidential. Parties named in the testimony may review and respond to those parts of the documents (the complaint and affidavits) in which they are mentioned. Formal investigations are only conducted by NGB, and then only when a Technician has filed a formal EEO complaint (after the mandatory counseling procedure.)

o. Complaints, representatives, witnesses, and official EEO Staff, including counselors and investigators, shall be free from restraint, interference, coercion, discrimination, or reprisal during all stages of the complaint process.

p. Appropriate actions will be initiated against any California National Guard employee found to have discriminated, or to have engaged in acts of reprisal. Reprisal means that the employee suffered negative consequences because of his/her involvement in the EEO process.

q. This does not mean that you, as managers/supervisors cannot evaluate, counsel, award or discipline and take authorized personnel actions relating to the complainant. These actions must, however, be strictly job-related and justifiable. An action perceived as “reprisal” by the complainant may not have been intended as “reprisal” by the supervisor. It is always a good idea in these circumstances to consult with the HR Employee Relations Chief, the Supervisory Personnel Management Specialist, the SEEM, the Human Resources Officer (HRO), and/or the Staff Judge Advocate/Legal Advisor, when contemplating any negative action against a present or former complainant.

r. EEO is a management program. Therefore, while certain functional responsibilities may be delegated to specific individuals, the ultimate success or failure of the program rests with managers and supervisors. There are many positive actions that may be initiated by managers at all levels. Some seemingly unrelated incidents may culminate in a formal technician EEO complaint. The prudent manager seeks to minimize the risk of such an occurrence through his/her everyday exchanges with employees.

s. The goals of the technician complaint process are to resolve allegations of discrimination, to the satisfaction of both the employee/applicant and management. Managers should make every effort to resolve any EEO matter at any stage of the complaint process, not only prior to the filing of a formal complaint. During the informal stage, the EEO counselor works with management officials who are able to direct or effect remedial actions, if appropriate, to informally resolve the problem. The EEO counselor will pursue resolution of the allegation(s) of discrimination to the highest level of management to reach a settlement.

#### **14. The Supervisors Role.**

a. As a supervisor, what is your role in EEO complaints? You should remember that:

(1) If a technician informs you that they wish to make a discrimination or sexual harassment complaint (whether or not the complaint is about you), you should inform the technician that they must first meet with an EEO Counselor (you or the employee may call the SEEM’s office or contact one of the Counselors from the list on your bulletin board).

(2) A Technician has the right to remain anonymous during the counseling stage of the complaint (this is also called the informal stage). So, if you are contacted by someone conducting an inquiry into an informal EEO complaint, you may not necessarily be informed of who has initiated the complaint.

(3) The Counselor’s role is to gather facts, conduct inquiries, and attempt to resolve the complaint at the lowest level. You must cooperate with the Counselor.

(4) If the complaint cannot be resolved to the satisfaction of the complainant, then, and only then, will the complainant have the right to file a formal complaint.

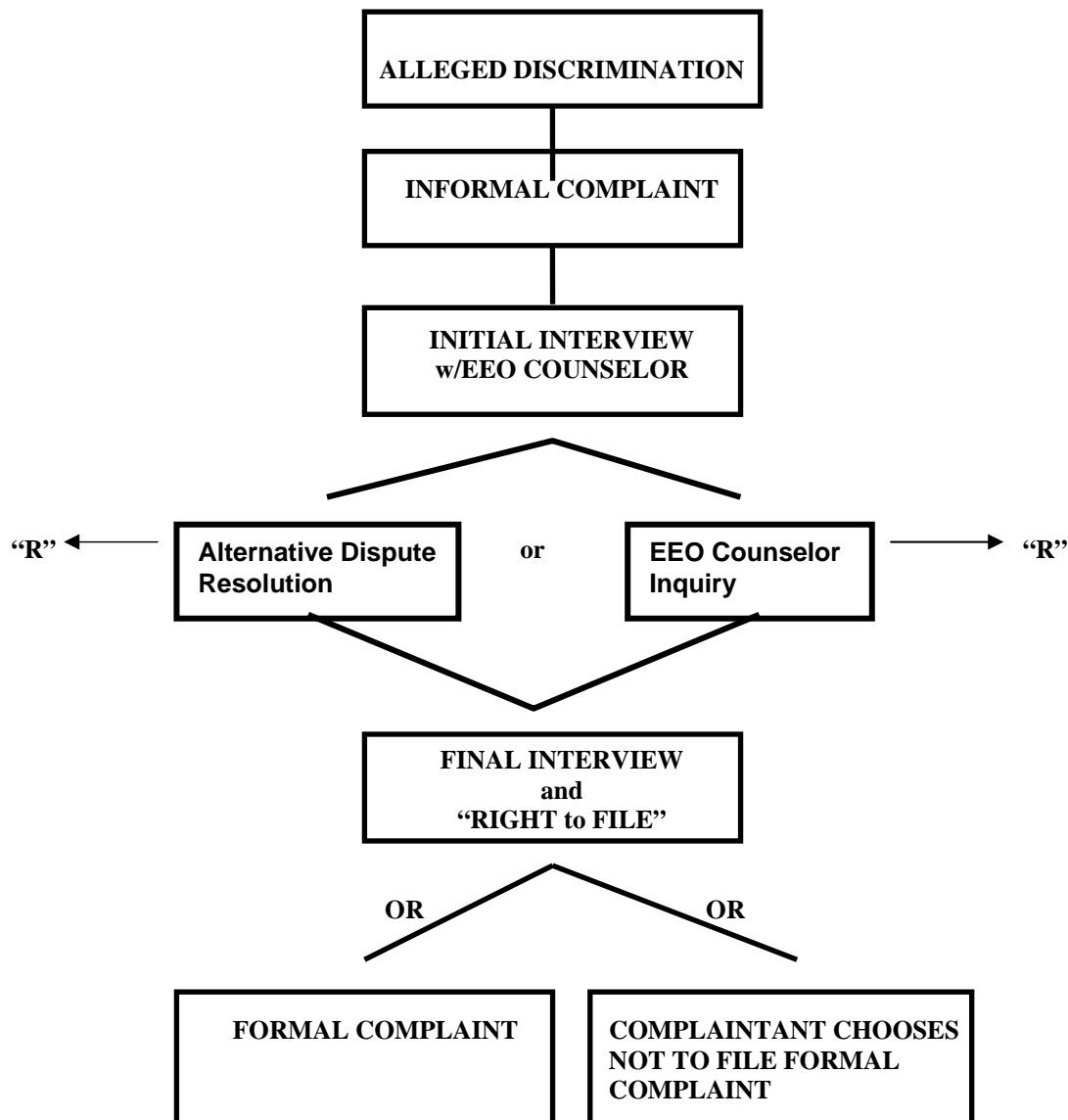
(5) Formal complaints are managed by the SEEM’s office, and formal investigations are conducted, only, at the direction of the Chief, National Guard Bureau.

(6) Complainants lose their right to anonymity when the complaint “goes formal”.

(7) At any time - if you, or one of your technicians, has questions about the Technician EEO complaint process, call the SEEM at 916-854-3646 or DSN 466-3646.

## 15. Major Steps in the Complaint Process.

### MAJOR STEPS IN THE PROCESSING OF INFORMAL EEO COMPLAINTS



**"R" = RESOLUTION**

**Resolution may be attempted even after the complainant has been advised of their "Right to File"**

## 16. Statutes, Regulations, and Resources.

Equal Employment Opportunity is the right of all people. Most civilian Government employees (technicians) and applicants for employment are protected from discrimination through enforcement of the numerous laws and orders. EEO program implementation in the California National Guard is in accordance with the following major laws and regulations:

a.. **The Civil Rights Act of 1964, as amended** - made discrimination illegal based on: race, color, religion, national origin, and sex.

b. **The Equal Employment Opportunity Act of 1972, as amended** - applies to Federal, State, and local government employees. It made the Civil Service Commission the lead agency in EEO and gave enforcement authority to the Equal Employment Opportunity Commission (EEOC).

- c. **The Age Discrimination in Employment Act of 1967, as amended** - made discrimination based on ages 40 and over illegal.
- d. **The Rehabilitation Act of 1973, as amended** - Made discrimination against qualified physically or mentally disabled individuals illegal.
- e. **The Equal Pay Act of 1963** - Prohibits gender-based wage discrimination.
- f. **The EEO Management Directive 715** - provides instructions for the development and implementation of Multi-year Affirmative Employment Plans (AEP). The Directive is issued by the EEOC.
- g. **EEO Management Directive 107** - is a Federal Manual issued by the EEOC.
- h. **Title 29 Code of Federal Regulations** - Includes Parts 1604 through 1613, referring to EEO in the Federal Government.
- i. **Executive Orders** - 11246, 11375, and 11478.
- j. **Vietnam Era Veterans Readjustment Act of 1974.**
- k. **Civil Service Reform Act of 1978.**
- l. **Federal Personnel Manual.**
- m. **Uniform Guidelines of Employee Selection Procedures.**
- n. **Federal Equal Opportunity Recruitment Program (FEORP).**
- o. **National Guard Bureau Regulation 690-600/AF401614** - EEO discrimination complaint process.

## 17. Glossary.

- a. **Barrier** - personnel principle, policy, or practice which restricts or tends to limit the representative employment of applicants and employees, especially minorities, women, and individuals with disability.
- b. **Civilian Labor Force (CLF)** - persons, 16 years of age or older, who are employed or seeking employment.
- c. **Military Labor Force (MLF)** - persons who are members of the California National Guard.
- d. **Conspicuous Absence** - particular protected group that is nearly or totally nonexistent from a particular occupation or grade level in the work force.
- e. **Protected Groups** - Black males and females, Hispanic males and females, Asian/Pacific Islander males and females, American Indian/Alaskan Native males and females, and White females. Handicapped males and females are also considered EEO groups but are covered by the Rehabilitation Act of 1973.
- f. **Employment Category** - the major occupational categories for the White Collar and Wage board pay system include: Professional, Administrative, Technical, Clerical, Other, and Blue Collar (PATCOB).
- g. **Major Occupation** - mission oriented occupations or other occupations with 100 or more employees.
- h. **Manifest Imbalance** - representation of protected groups in a specific occupational grouping or grade level in the agency's work force that is substantially below its representation in the appropriate MLF.
- i. **Minority** - a protected class - members of which have been defined by the EEOC as:
  - (1) Black - persons who have origins in any of the Black racial groups of Africa.
  - (2). Hispanic - persons of Mexico, Puerto Rico, Cuba, Central or South American, or other Spanish culture or origin, regardless of race.
  - (3). American Indian/Alaskan Native - persons who have origins in any of the original peoples of North America.
  - (4) Asian/Pacific Islanders - persons who have origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.
- j. **Numerical Objectives (Goals)** - quantifiable objective designed to eliminate a manifest imbalance or conspicuous absence of protected groups.
- k. **Objective** - statement of a specific end product or condition to be attained by a specific date. Accomplishment of an objective will lead to the elimination of a barrier or other problem.
- l. **On Site Program Review** - visit by EEOC to an agency for the purpose of reviewing program areas such as program management, data collection, monitoring and evaluation, personnel practices, barrier analysis, prevention of sexual harassment, training and recruitment.
- m. **Program Analysis** - review of the agency's entire affirmative employment program.
- n. **Program Element** - prescribed program area for assessing where agencies should concentrate their affirmative employment program analysis for accomplishing an action item.
- o. **Responsible Official** - Executive, Manager, or Supervisor who is accountable for accomplishing an action item.
- p. **Prima Facie Evidence** - sufficient legal evidence to raise an inference of discrimination. Evidence must be produced which raises an inference of a causal connection between the protected group status and the employer's actions.

q. **Protected Class** - any group (or member of the group) specified in, and protected by, the anti-discrimination laws. These laws protect persons from discrimination because of age, gender, color, disabilities, national origin, race, religion, or sex. Affirmative employment actions are required for some of these groups because they have suffered the effects of past discrimination. These include racial minorities, women, and persons with a handicapping condition.

r. **Reasonable Accommodation.**

(1) Used in connection with affirmative employment for the handicap. If a handicapped employee or applicant has the skills necessary to perform a job, an employer must make reasonable adjustments to the physical environment, equipment, schedules, or procedures that would enable that person to function in the position.

(2) Used in connection with discrimination because of religion. If an employee needs to be absent for religious reasons, an employer must make reasonable accommodation to grant the employee that absence even though it may conflict with, or differ from, the employer's schedules, standards, or other business conditions, unless such absences cause the employer undue hardship.

s. **Representative** - a person chosen by someone to advise him/her in a grievance or complaint of discrimination.

t. **Reprisal** - unfavorable treatment of an employee because of his/her participation in the discrimination complaint process.

u. **Under-representation** - a situation in which the percentage of members of a race/national origin group, by gender, in a particular category of employment is lower than the percentage they occupy in the appropriate MLF.

v. **Unlawful employment practice** - any policy or practice that has discriminatory intent or effect.

w. **Workforce profile** - an analysis of the agency work force showing the dispersion of race and national origin by gender within specified employment categories.

**FOR THE GOVERNOR:**

**WILLIAM H. WADE II**

*Major General*

*The Adjutant General*

**OFFICIAL:**



**STUART D. EWING**

*Captain, CA ANG*

*Deputy, Human Resources Officer*